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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	:	
	:	
Federal-State Joint Board on Universal Service	:	CC Docket No. 96-45
	:	
Access Charge Reform	:	CC Docket No. 96-262

COMMENTS OF THE STATE MEMBERS OF THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE

I. INTRODUCTION

The State Members of the Federal-State Joint Board on Universal Service ("State Members") hereby submit these Comments to the Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45 Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking ("NPRM") as released by the Federal Communications Commission ("FCC" or "Commission") on May 28, 1999. The State Members submit these Comments to the NPRM to state its concern with the proportion of Non Traffic Sensitive ("NTS") interstate cost recovery coming from the Subscriber Line Charge ("SLC") versus the Presubscribed Interexchange Carrier Charge ("PICC") and the Carrier Common Line Charge ("CCLC"). The Commission explains the proposed changes that it is considering at Paragraphs 123 through 135 of the NPRM.

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The State Members submit that presently the residential and single line business customer, through universal service rates, pays much too great a share of the joint and common costs of interstate access through the $3.50 SLC. The State Members calculate that the $3.50 SLC represents 70% of current interstate access revenues recovering NTS costs associated with Universal Service lines and is much greater than a reasonable share of these costs. Accordingly, State Members believe that the SLC on universal service lines[1] must be reduced or eliminated in order to respond to the requirement of Section 254(k) of the Telecommunications Act of 1996 ("1996 Act") which ensures that universal service should bear no more than a reasonable share of the joint and common costs of facilities used to provide both competitive and non-competitive services. 47 U.S.C. §254(k).

The State Members also suggest that the SLC stands as a required rate that customers must pay to their Incumbent Local Exchange Carrier ("ILEC"). The SLC is insulated from the greater competitive forces that bear upon Interexchange Carrier ("IXC") recovery of the PICC. The FCC should seek to encourage revenue recovery through more competitive markets. Customers have not yet seen the benefits of the 1996 Act as effective competition in local telecommunications markets across the nation has been minimal at best. Thus, the SLC continues to avoid real competitive forces. Furthermore, both rural and non-rural ILECs currently charge the SLC. Therefore, the State Members caution the FCC that any changes to the SLC mechanism be clarified to apply to non-rural carriers, consistent with the Joint Board's Second Recommended Decision.

[1]Throughout these Comments the State Members shall be addressing the need to reduce the SLC on universal service lines.

The State Members submit that the FCC should reduce the SLC as it is subject to the least amount of competitive pressure. Accordingly, the SLC should be eliminated or reduced prospectively as interstate access reductions take place. It would be appropriate to concentrate interstate cost recovery into one rate mechanism that is charged to IXCs and is subject to the greatest amount of competitive forces.

In support thereof, the State Members submit these Comments.

II. COMMENTS

A. State Members Are Concerned That The SLC Recovers A Large Portion Of Universal Service Non Traffic Sensitive Costs.

The State Members are concerned that the SLC appears to recover an unfairly large portion of NTS access cost recovery contrary to 47 U.S.C. § 254(k). The SLC for all practical purposes resembles a flat local rate that must be incurred by the customer in order to obtain basic universal services. State Members are concerned with references in the Order suggesting that consumers should pay for 100% of the interstate portion of common line costs through a SLC. Further, the State Members assert that the Commission should seek to reduce the SLC for universal service in order to comply with 47 U.S.C. §254(K) and move interstate NTS cost recovery away from the SLC applied to universal service lines, the least competitive interstate cost recovery mechanism.

The Commission states that to the extent that SLC rates do not "reflect the full underlying cost of providing access service, they could be said to embody implicit interstate support." NPRM at ¶ 124. The Commission also explains that: "Because the SLC for primary residential and single-line business lines is capped at $3.50, the SLC does not fully recover the permitted common-line revenues of providing service to the majority of these customers." Id. at ¶ 127. Based upon the fact that the SLC does not fully recover the interstate common line costs, the Commission suggests that the SLC cap may create "implicit support for primary residential lines." Id. at ¶ 127. The NPRM states that the jurisdictional separation of costs between the state and interstate jurisdictions may also be a source of universal service support, as well as the requirement that access rates should be calculated on an average basis. Id. at ¶ ¶ 124, 125.

The Commission tentatively determines that price cap local exchange carriers should reduce interstate access rates in order to reflect any increased universal service support that they receive. Id. at ¶ 130. The Commission proposes that this action should reduce the Carrier Common Line Charge and multi-line Presubscribed Interexchange Carrier Charges. Id. The Commission has also suggested that they seek comment on whether the SLC should be reduced on primary residential lines and single line business lines. Id. at ¶ 133.

State Members are greatly concerned with the large share of NTS costs recovered from universal service rates through the SLC. Effectively, the SLC is a charge that all customers that purchase universal service from ILECs are still required to pay. State members submit that the Commission must recognize that the primary goal of Section 254 of the 1996 Act is that universal service must be provided at just, reasonable, and affordable rates. 47 U.S.C. § 254(b)(1). Further, Section 254(k) requires that the Commission ensure that services included in the definition of universal service bear no more than a reasonable share of joint and common costs of facilities used to provide those services.[2] The loop and its associated elements are joint and common facilities used to provide all telecommunications services, including those which are included within the definition of "universal service."

[2] The Conference Report also emphasized that universal service "may bear less than a reasonable share of the joint and common costs of facilities used to provide both competitive and noncompetitive services." S. Conf. Report No. 104-230, 104th Cong., 2nd Sess 129 (1996)(emphasis added).

We believe that Congress was concerned that local service ratepayers not be responsible for having to pay an unreasonable share of joint and common costs in the form of a disproportionately high fixed subscriber line charge. A notable means by which interstate allocated joint and common costs are recovered from universal service is through the SLC.[3] Accordingly, Section 254(k) limits the ability to recover more than a reasonable share of joint and common costs through the SLC.

The Commission must apply the requirements of the 1996 Act and limit the assessment of NTS costs against universal service. Regardless of how the Commission wishes to restructure and revise access charges, it may only do so in a manner which places on universal service no more than a reasonable share of joint and common costs. Should the Commission further reduce other access elements, while leaving the present SLC for residential and single line business in place, this would only continue to shift loop costs to universal service and would increase the already unbalanced recovery of joint and common costs through the SLC.

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[3] The SLC presently recovers "common line" costs which include loop costs. *In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and establishment of a Joint Board,* CC Docket Nos. 78-72 and 80-286, at ¶ 8, n. 8 (1987). Such costs encompasses "all equipment costs and related expenses associated with connecting a subscriber's premises with a LEC switch." Id. Such costs are generally referred to as Non Traffic Sensitive Costs.

When the Commission last revised the level of the residential SLC in 1987, it accepted the finding of the 80-286 Joint Board that a "fair share" of costs to be recovered from IXCs through interstate access charges would be approximately 50% of interstate allocated loop costs.[4] The State Members believe that current NTS cost recovery from universal service is well above that level. The State Members emphasize again that Section 254(k) does not allow universal service to bear more than a "reasonable share" of such costs, but allows such a share to be less. State Members believe that the FCC must set as a goal eliminating or reducing the proportion of interstate NTS access costs recovered through the SLC.

In fact, SLC revenues presently account for approximately 70% of interstate common line revenues recovered from universal service lines.[5] The current SLC for Universal Service is $3.50 per line per month. The attached calculations show the revenue recovered from the CCLC and PICC combined together equals approximately $1.49 per month.

State Members encourage the Commission to rectify the problem of a large proportion of interstate NTS recovery coming from the SLC. The SLC[6] should be either eliminated immediately or reduced as a result of prospective interstate access reductions. The most appropriate means of

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[4] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Joint Board Recommended Decision, 2 FCC Rcd 2324, ¶ 49 (1987), Report and Order, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 2953 (1987); Memorandum Opinion and Order on Reconsideration and Order Inviting Comments, 3 FCC Rcd. 4543 (1988).

[5] The State Members attach a spreadsheet as Appendix A indicating how this estimate was calculated. The calculations supporting this determination come from FCC data concerning revenue recovered through interstate access charges, i.e., SLC, PICC, and CCLC.

[6] State Members emphasize that the SLC at issue in these comments is limited to the SLC of non-rural carriers. The FCC should be careful to avoid unintended impacts upon universal service cost recovery mechanisms for rural telephone companies.

recovering NTS costs would be through the PICC.[7] State Members encourage the Commission to at least apply future access reductions to the SLC in order to reduce the proportionate share of costs recovered from the SLC.[8] By no means should the PICC and/or the CCLC be merged into the SLC. We recognize that the Commission has set in place mechanisms that reduce access revenues on a going forward basis. Given the disproportionate recovery from the SLC this may be a productive means of reducing the SLC burden on universal service.

B. The Common Line Cost Is A Cost Of Providing Many Services And Therefore Recovering NTS Costs Through Access Charges Is Necessary And Appropriate.

The State Members submit that both the SLC and PICC should contribute toward common line costs because, as set forth below, the FCC has on many occasions recognized that the common line cost is a cost of providing many services. For example, when an IXC purchases access service the IXC should contribute toward the local exchange carriers' cost of providing to the IXC a means of reaching the customer. The cost of the common line is a shared cost of providing all of the telecommunications services in the interstate jurisdiction and its costs should be recovered from all of the services that use that common line. Therefore, recovering a portion of loop costs through

[7]State Members also wish to make clear that they support the FCC's effort to eliminate the CCLC as a means of recovering NTS costs.

[8]This year the reduction of ILEC interstate access charges has been estimated at $1.7 billion. Telecommunications Reports, June 21, 1999 at 33.

interstate carrier access charges, i.e. PICC, is necessary and essential. It would not be appropriate to shift all such costs to the SLC as the FCC has tentatively proposed.

This position has been consistently set forth in past FCC decisions. For example, in the First Report and Order regarding implementation of the 1996 Act, the FCC determined that loop costs are joint or common costs to provide both local intrastate and interstate access costs as follows:

> As discussed in greater detail below, separate telecommunications services are typically provided over shared network facilities, the costs of which may be joint or common with respect to some services. The costs of local loops and their associated line cards in local switches, for example, are common with respect to interstate access service and local exchange service, because once these facilities are installed to provide one service they are able to provide the other at no additional cost.

In the Matter of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, August 8, 1996 at ¶ 678 (emphasis added). Thus, the FCC has ruled the loop is a joint or common cost. The FCC applied this conclusion when it converted the CCLC into a flat rate charge to cover loop costs as follows:

> We reject claims that a flat-rated, per line recovery mechanism assessed on IXCs would be inconsistent with section 254 (b) that requires "equitable and nondiscriminatory contribution to universal service by all telecommunications providers." The PICC is not a universal service mechanism, but rather a flat-rated charge that recovers local loop costs in a cost causative manner.

In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, First Report and Order, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, May 16, 1997, ¶ 104. In the reform of the separations process, the FCC has also stated the economic reasoning and analysis which underpins this treatment of the loop as follows:

> Nearly all ILEC facilities and operations are used for multiple services. Some portion of costs nonetheless can be attributed to individual services in a manner reflecting cost causation. This is possible when one service, using capacity that would otherwise be used by another service, requires the construction of greater capacity, making capacity cost *incremental* to the service. The service therefore bears a causal responsibility for part of the cost. The cost of some components in local switches, for example, is incremental (i.e. sensitive) to the levels of local and toll traffic engaging the switch. Most ILEC costs, however, cannot be attributed to individual services in this manner because in the case of joint and common costs, cost causation alone does not yield a unique allocation of such costs across those services. The primary reason is that shared facilities and operations are usually capable of providing at least one additional service at no additional cost. In such instances, the cost is *common* to the services. For example, the cost of a residential loop used to provide traditional telephony services usually is common to local, intrastate toll, and interstate toll services. In a typical residence, none of these services individually bears causal responsibility for loop costs because no service places sufficient demands on capacity to warrant installation of a second loop.

In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, <u>Notice of Proposed Rulemaking</u>, CC Docket No. 80-286, November 10, 1997 at ¶¶ 14, 15.

Therefore, the State Members support the Commission's determinations that interstate NTS costs should be recovered from many access elements. As stated, in order to maintain some balance in these recovery mechanisms, the SLC for non-rural carriers must be eliminated or reduced.

C. <u>The Commission Should Continue to Require Recovery of Interstate NTS Costs Through Access Charges In The More Competitive Markets</u>.

State Members support the Commission's efforts to bring effective competition to telecommunications markets. We encourage the Commission to continue to force carriers to subject their recovery of PICC charges to market forces. The Commission should also eliminate or reduce the extent to which NTS cost recovery is forced through the SLC as a part of universal service. As the State Members have explained above, it would be appropriate to either eliminate or reduce the SLC. Even if the Commission chooses to reduce the SLC over time, such an approach would also eliminate the SLC and shift NTS costs to the PICC. It is also particularly appropriate to guarantee rate reductions by eliminating the SLC because the IXCs have no obligation to flow through interstate access charge reductions on a proportionate basis to all of their customers.

A further concern of the State Members is that there exists little local competition for the residential and single line business customer. The lack of competition in the local market gives the universal service customer little, if any, means of avoiding the SLC by choosing an alternate carrier that does not apply a SLC. Given the lack of competition, the SLC on universal service lines avoids the greater competitive pressures that would be brought to bear in the IXC market.

State Members also suggest that consumers are now able to reduce or eliminate the flow through of PICC charges by careful shopping in the more competitive IXC market. This form of competitive pressure is better able to discipline the recovery of NTS costs. Thus, the recovery of NTS costs through rates other then the SLC is most consistent with the competitive goals of the FCC.

III. CONCLUSION

The State Members of the Federal-State Joint Board on Universal Service respectfully submit these Comments. State Members have determined that the Commission should eliminate or at least reduce the SLC on universal service lines. Such steps will force carriers to recover a larger portion of NTS costs through their more competitive markets.

Respectfully submitted,

Julia Johnson
Florida Public Service Commission
Commissioner

Laska Schoenfelder
South Dakota Public Utilities Commission
Commissioner

Pat Wood, III
Texas Public Utility Commission
Chairman

Martha Hogerty
Missouri Public Counsel

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Proportion of Non Traffic Sensitive Revenues Recovered from SLC versus Other Interstate Access Elements for Universal Service

SLC payments		Total Annual	SLC	Lines	Percent
Universal Service		$4,394,838,000.00	$3.50	104,639,000	63%
Non-Primary Resid.		$1,063,198,080.00	$5.88	15,068,000	9%
Multiline Bus.		$2,891,374,200.00	$7.05	34,177,000	20%
Centrex		$1,085,756,400.00	$7.05	12,834,000	8%
	Total	$9,435,166,680.00	Total	166,718,000	
PICC payments			PICC		
Universal Service		$615,277,320.00	$0.49	104,639,000	
Non-Primary Resid.		$249,526,080.00	$1.38	15,068,000	
Multiline Bus.		$910,475,280.00	$2.22	34,177,000	
Centrex		$58,523,040.00	$0.38	12,834,000	
	Total	$1,833,801,720.00			
Carrier Common Line payments				Minutes	
CCL Originating		$1,500,272,000.00	$0.0082	182,960,000,000	
CCL Terminating		$503,201,600.00	$0.0016	314,501,000,000	
	Total	$2,003,473,600.00			
Universal Service		63%			
		$1,257,461,546.03	Est. of CCLC from Univ. Serv. Lines		

Revenue Calculations for Universal Service Lines

SLC	$4,394,838,000.00	PICC	$615,277,320.00
		CCL	$1,257,461,546.03
		Total	$1,872,738,866.03
SLC	$4,394,838,000.00	SLC/line/mo.	$3.50
PICC/CCL	$1,872,738,866.03	PICC&CCL/line/mo.	$1.49
Total	$6,267,576,866.03	Total	$4.99
SLC/Total	70%		

Source: Trends in Telephone Service, FCC, February, 1999, Tables 1.1, 1.2, 1.3, and 1.4.

Carriers considered are all FCC price cap carriers and all carriers in the NECA pool.

Note: Universal Service is defined as Primary Residential lines and Single Line Business.

Note: All Minutes of Use reported are from 1997.

Note: CCL revenue from Universal Service lines estimated by using Universal Service line count as percentage.